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In re Application of
Seerha et al.
Application No. 10/075,079
Filed: February 12, 2002
Attorney Docket No. *

DECISION ON REQUEST FOR PATENT
TERM ADJUSTMENT
RECONSIDERATION

This decision is in response to Applicants' "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN THE NOTICE OF ALLOWANCE (37 CFR 1.705(b))" timely¹ filed on September 21, 2004. Applicants request that the Patent Term Adjustment reflect a value of one hundred and eight (108) days rather than the United States Patent and Trademark Office determination of twenty-one days.

The Applicants' request has been GRANTED. The Office will adjust the Patent Term adjustment determination at the time of the mailing of the Notice of Allowance to reflect a determination of one hundred and eight (108) days.

The Applicants asserts that the difference in the amount of patent term adjustment is related to the date of the filing of the application. The applicants assert that the filing date of the application is incorrect and that the filing date of the application was February 12, 2002, not May 8, 2002. Accordingly, the applicants assert that the amount of time awarded for the Office's failure to initially act upon the application is one hundred and twenty-three (123) days rather than the thirty-days as shown in the PTA calculation.

The applicants arguments are well taken. On November 8, 2004, the Office decided a filing date petition that changed the filing date of the application from May 8, 2004 to February 12, 2004. Accordingly, the Office missed the fourteen-month to first action requirement by a period of one hundred and twenty-three days (123) rather than the initial determination of thirty-six (36) days.² In addition, it is undisputed that the application took over three months to respond to an Office action and accordingly failed to engage in reasonable efforts to conclude prosecution of the application by a period of fifteen (15) days. Overall the patent term adjustment at the time of the mailing of the notice of allowance is one hundred and eight (123-15) days.

¹Issue fee paid on September 21, 2004, same date as petition.

²The administrative delay began on April 13, 2003, the day after the fourteen month term expired and ended on August 13, 2004 the date of the first mailing of an action under 35 USC 132 (restriction requirement).

The Office will adjust the PAIR calculation to reflect this decision.

The Office will charge DA **07-1060** \$200.00 as authorized. No additional fees are required.

This application will be forwarded to the Office of Publication for the prompt issuance of the patent application.

Any additional questions concerning this matter should be direct to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

Kery A. Fries
Karin Ferriter
Senior Legal Advisor,
Office of Deputy Commissioner for Patents
for Patent Examination Policy

cc: Copy of adjusted Pair calculation